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AVENUE NYC, LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

IN RE SUBPOENAS *DUCES TECUM*  
AND TO TESTIFY AT DEPOSITION  
TO SEMA CONDE

LIQWD, INC. and OLAPLEX LLC,  
Plaintiffs,

vs.

L'ORÉAL USA, INC., L'ORÉAL USA  
PRODUCTS, INC., L'ORÉAL USA  
S/D, INC. and REDKEN 5<sup>TH</sup> AVENUE  
NYC, LLC,

Defendants.

CASE NO. 2:19-mc-00015-GW-PJWx

Underlying Litigation  
Civil Action No. 17-14-JFB-SRF  
United States Distr. Del.

Discovery cutoff: January 25, 2019  
Pretrial conference date: June 4, 2019  
Trial date: July 29, 2019

**[DISCOVERY MATTER]**

**DEFENDANTS'  
SUPPLEMENTAL  
MEMORANDUM IN SUPPORT  
OF MOTION TO COMPEL NON-  
PARTY SEMA CONDE TO  
COMPLY WITH SUBPOENA  
*DUCES TECUM* AND TO  
TESTIFY AT DEPOSITION**

Date: February 28, 2019  
Time: 1:30 p.m.  
Dept.: 790  
Judge: Hon. Patrick J. Walsh

[Declaration of Serli Polatoglu filed  
and served concurrently herewith]

1 L'Oréal USA, Inc., L'Oréal USA Products, Inc., L'Oréal USA S/D, Inc., and  
2 Redken 5th Avenue NYC, LLC (together, "L'Oréal USA") submit this  
3 supplemental memorandum to briefly address some of the arguments raised by  
4 Sema Conde ("Conde") in the Joint Stipulation regarding L'Oréal USA's Motion to  
5 Compel Conde to Comply with Subpoena *Duces Tecum* and to Testify at  
6 Deposition (the "Subpoena"). None of Conde's arguments excuse her failure to  
7 comply with the Subpoena, which was served on December 16, 2018. As such,  
8 Conde should be ordered to promptly comply with the Subpoena.

9 Conde's opposition to L'Oréal USA's Motion rests largely on assertions that  
10 the information sought in the Subpoena is irrelevant. This position is unsupported,  
11 and gives short shrift to the determination made by the Court in the Underlying  
12 Action, *Liqwd, Inc. v. L'Oréal USA, Inc.*, Civil Action No. 17-14-JFB-SRF, that  
13 information sought from stylists who used Olaplex's products prior to their public  
14 launch is relevant. (*See* Dkt. No. 5-2, Ex. N, ¶ 6.)<sup>1</sup> Conde is one of those stylists.  
15 The Northern District of Illinois reached a similar conclusion when it recently  
16 granted L'Oréal USA's Motion to Compel against a similarly situated stylist, Vicki  
17 Laris. (*See* Declaration of Serli Polatoglu ("Polatoglu Decl.") filed concurrently  
18 herewith, Ex. A and Ex. B at 5:24-6:8.) Conde's use of the Olaplex products  
19 relates to issues of patent invalidity and to defenses to Olaplex's claims for trade  
20 secret misappropriation.

21 Conde also asserts that she should not be ordered to comply with the  
22 Subpoena because it is unduly burdensome. This argument has little traction.  
23 L'Oréal USA has done all it can to minimize the burden imposed on Conde. It has  
24 repeatedly explained that it does not expect her deposition to last a full day. (*See*,

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25 <sup>1</sup> The Court in the Underlying Action concluded as much after reviewing three  
26 rounds of briefing on this issue (*see* Dkt. No. 5-2, Exs. K-N), belying Conde's  
27 assertion that the court simply "accepted [L'Oréal USA's] conclusory general  
28 allegations that the stylists' testimony is 'plainly relevant' to their invalidity  
defenses." (Dkt. No. 5-1 at 4.)

1 e.g., Dkt. No. 5-2, Exs. C, G.) It has further narrowed the already-targeted  
2 document requests in the Subpoena. (Dkt. No. 5-1 at 21.) All this notwithstanding,  
3 Conde has refused to produce a single document responsive to the Subpoena, or to  
4 appear for deposition.

5 While Conde suggests that some of the information requested in the  
6 Subpoena may also be in the possession of Plaintiffs in the Underlying Action,  
7 Liqwd, Inc. and Olaplex LLC (together, “Olaplex”) (*see* Dkt. No. 5-1 at 43-45),  
8 L’Oréal USA has been hamstrung by Olaplex’s refusal to produce the information.  
9 Moreover, a similar argument was rejected when it was raised by Ms. Laris in the  
10 Northern District of Illinois. (*See* Polatoglu Decl., Ex. B at 5:18-20 (Court: “What  
11 would be L’Oréal’s motivation to take a deposition only to collect information they  
12 have already got? What’s their motivation?”).) L’Oréal USA seeks information  
13 regarding the prior use of Olaplex’s products by the very person who engaged in  
14 that use, whose name has appeared in documents produced by Olaplex.<sup>2</sup>

15 Any small burden the Subpoena imposes on Conde does not excuse her  
16 refusal to comply. Indeed, in her Objections to the Subpoena, Conde represented  
17 that she was unavailable for deposition in December, because December was the  
18 busiest time of the year for her business. (Dkt. No. 5-2, Ex. I at 3). Conde makes  
19 no similar claims about her schedule at this time of year. In any event, the standard  
20 is not whether discovery will impose a burden, but whether it imposes an undue  
21 burden. Fed. R. Civ. P. 45(d)(1). As the Northern District of Illinois explained  
22 when it ordered Ms. Laris to comply with her subpoena:

23  
24 <sup>2</sup> Conde’s argument that documents responsive to Request for Production No. 2,  
25 which seeks “[a]ll Documents and Communications Concerning the Olaplex  
26 Products, including, but not limited to, Social Media Content, before January  
27 2017,” are equally available to L’Oréal USA, evinces a misunderstanding of the  
28 Request. (Dkt. No. 5-1 at 21, 27.) Many social media platforms, including  
Facebook and Instagram, maintain private groups or messaging features. L’Oréal  
USA would not have access to any posts made by Conde in these private forums.

Compliance with discovery is a nuisance. I agree. And it's complicated. And when you're a third party, it just seems like it's not fair. **But the rule of law is really important in the United States**, and it's really important to me. **And that means that, even though it's inconvenient or difficult or annoying, when you get a subpoena or your testimony is necessary for due process, you cooperate** because we live in a free society because we all comply with the rules.

(Polatoglu Decl., Ex. B at 5:24-6:8 (emphasis added).)

Finally, Conde's contention that L'Oréal USA's Motion is moot has been laid to rest by the District of Delaware. (Dkt. No. 5-1 at 4, 6, 28.) During a discovery teleconference held today in the Underlying Action, L'Oréal USA informed the Court that certain third parties (who are represented by counsel retained by Olaplex), have objected to discovery on the grounds that the third party discovery deadline has passed. (*See* Polatoglu Decl., ¶ 3.) The Court made clear that, if a subpoena was served prior to the original discovery cut-off date (December 21, 2018), then those third parties must comply with any discovery order relating to that subpoena. (*Id.*) As an example, the Court referenced the fact that the Northern District of Illinois just opened discovery for the limited purpose of Vicki Laris' deposition. (*See* Polatoglu Decl., ¶ 3 and Ex. B at 6:9-15). Conde was served with the subpoena on December 16, 2018, following numerous attempts by Conde to evade service.<sup>3</sup> (Dkt. No. 5-2, Exs. D, H.) As such, Conde's argument

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<sup>3</sup> As reflected in its Motion, L'Oréal USA had been attempting to serve Conde with the Subpoena for nearly one month before it successfully served her on December 16, 2018. (*See* Dkt. No. 5-2, Ex. D (affidavit of due diligence stating that a process server first attempted to serve Conde on November 21, 2018).) That is why the Subpoena set the date of compliance for December 11, 2018—a date L'Oréal USA made perfectly clear it was willing to change in order to accommodate Conde's schedule. L'Oréal USA made eight unsuccessful attempts to serve Conde at her place of business before attempting to serve her at her residence. (Dkt. No. 5-2, Ex. D.) Contrary to her allegations, no process server who attempted to serve Conde carried a gun, nor did anyone attempt to serve Conde anywhere other than her place business or residence. (Dkt. No. 5-1 at 40.) Conde could have avoided all of this

